

To: Johnson, Barnes[Johnson.Barnes@epa.gov]; Brown, Byron[brown.byron@epa.gov]
Cc: Tom Adams[thadams@acaa-usa.org]
From: Danny Gray
Sent: Sat 8/19/2017 1:02:03 AM
Subject: EPA-Charah Meeting Followup

Dear Byron and Barnes – Thank you again for meeting with Charah representatives last week regarding our request for clarification that nothing in the CCR rule prevents owners/operators from demonstrating that the use of CCR to reclaim clay mines can qualify as a beneficial use under the CCR rule. I believe it was clear from our discussion that the use of CCR to reclaim clay mines clearly can meet the rule’s four environmentally protective beneficial use criteria and that these reclamation activities make sense from an environmental and policy perspective because they restore clay mines to productive use in an economical manner. There is really no technical, policy, economic or environmental reason for not allowing these beneficial use activities, which RCRA encourages and the CCR rule expressly allows.

Instead, the focus of our discussion last week revolved around a common sense reading of the CCR rule—specifically, that EPA clarify that the phrase “sand and gravel pit or quarry” (which has been defined, in part, to include “an excavation for the extraction of . . . minerals”) does *not* include clay mines. The U.S. Geological Survey and all other parties consider clay mines as distinct from sand and gravel. This clarification is necessary because the CCR rule does not allow for CCR beneficial use in sand and gravel pits or quarries, and, therefore, including clay mines in this definition automatically precludes CCR from ever being beneficially used to reclaim clay mines. Instead, such activities would automatically convert a clay mine to a CCR landfill, which as I explained is both incorrect as a technical matter and, more importantly, has significant adverse effects on the ability to restore these sites for future productive use.

I believe there was no dispute during the meeting that the damage cases identified in the rulemaking record that were the basis for the prohibition on CCR beneficial use were strictly sand and gravel pits or quarries, as commonly understood, and did *not* include a single clay mine. In fact, clay mines are a superb location for CCR beneficial use, given the impermeable nature of clay. The inclusion of the phrase “an excavation for the extraction of minerals” within the definition was in response to a *single* comment, that provided no supporting data or analysis. The intent of this comment clearly was not to establish a categorical prohibition on beneficially using CCR to reclaim clay mines. Unfortunately, however, EPA staff have, at least initially, read this portion of the definition of sand and gravel pit or quarry out of context and in a manner that inappropriately expands the definition far beyond sand and gravel pits to include virtually any mining site in the country without considering whether there is any supporting data or analysis, whether it makes sense to say that sand and gravel pits include most all types of mining sites, and whether there is any economic or environmental benefit associated with disallowing beneficial use at clay mines. As we discussed, this cannot be correct.

I understand that EPA has the ability to correct its earlier position that was conveyed to Charah, provided it provides a reasoned explanation for doing so. I believe our correspondence and discussions with EPA on this topic, as well as the Agency’s own better understanding of this issue, provide EPA with an ample reasoned basis for correcting its earlier reading of the definition and clarifying that the term sand gravel pit or quarry was never intended to, and does not, include clay mines. Again, Charah believes the quickest and most effective way to issue this clarification is through EPA’s online interpretations document addressing the beneficial use of CCR (*i.e.*, EPA’s “Frequent Questions About the Beneficial Use of Coal Ash”).

Thank you again for your time in helping Charah address this issue. Resolution of this issue is important for small businesses and makes sound environmental sense.

Please do not hesitate to contact me if you have questions or would like to discuss our request further.

Regards, Danny Gray

Danny L. Gray

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